

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Bridging the Digital Divide for Low-Income Consumers)	WC Docket No. 17-287
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	
To: The Commission		

COMMENTS

The Oceti Sakowin Tribal Utility Authority (“OSTUA”) hereby respectfully submits these Comments on the Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry (“*December 2017 Lifeline Order, NPRM and NOP*”).¹

In these Comments, the OSTUA urges the Commission to take a “fresh look” at Lifeline service, including the identity of the Lifeline providers serving this market, the beneficiaries of the Lifeline discount, and amount of the Lifeline discount necessary to achieve the statutory “affordability” mandate. OSTUA submits that, under the current Lifeline program, wireless resellers are the primary providers of Lifeline service, Tribal members prefer wireless service to wireline service to meet their needs, Tribal members rely on the Lifeline discount to obtain wireless service, and the Tribal Lifeline discount (up to an additional \$25.00 per month) is

¹ *Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155, December 1, 2017 (“December 2017 Lifeline Order, NPRM, and NOP”).*

necessary to make voice and broadband service affordable on Tribal lands.² These facts, together with additional information developed through this proceeding and a Tribal Consultation process, should guide the Commission's further efforts to reform the Lifeline program.

BACKGROUND

The OSTUA represents a coalition of Indian Tribes that support the advancement of Tribal sovereignty by protecting the rights of Tribal Nations and its members through inter-government coordination and enforcement of laws and requirements on Tribal Lands. The OSTUA was formed to provide a coordinated and united approach to addressing common utility and economic development issues of importance to Indian Tribes. Recognizing the important role of the OSTUA, on September 5, 2014, the Great Plains Tribal Chairman's Association passed Resolution No. 1-9-5-14, Support for Oceti Sakowin Utility Authority to assist tribal governments through a multi-tribal collaborative effort on (i) addressing jurisdiction and sovereignty issues, (ii) establishing tribal utility commissions, and (iii) resolving conflicts, disputes and issues with entities providing service on Tribal lands.”³

The OSTUA has an especially strong interest in this proceeding because many of the residents of the reservations of the Great Plains Tribes suffer extreme poverty and are very

² The OSTUA submits that the Commission should reconsider its *December 2017 Lifeline Order, NPRM, and NOI* and undertake a more focused effort, including consulting with Tribes, to determine what changes, if any, should be made to the Tribal Lifeline program. The OSTUA filed a Petition for Reconsideration of the *December 2017 Lifeline Order, NPRM, and NOI* on February 15, 2018.

³ All nine members of the GPTCA that were present at the meeting approved the Resolution. The GPTCA is comprised of the Cheyenne River Sioux Tribe, Crow Creek Sioux Tribe, Flandreau Santee Sioux Tribe, Lower Brule Sioux Tribe, Mandan, Hidatsa & Anikara Nation, Oglala Sioux Tribe, Omaha Tribe of Nebraska, Ponca Tribe of Nebraska, Rosebud Sioux Tribe, Sac & Fox Tribe, Santee Sioux Tribe of Nebraska, Sisseton-Wahpeton Oyate, Spirit Lake Tribe, Standing Rock Sioux Tribe, Trenton Indian Service Area, Turtle Mountain Band of Chippewa Indians, Winnebago Tribe of Nebraska, and Yankton Sioux Tribe.

dependent upon the Lifeline program—including the enhanced Tribal benefit—to obtain affordable telephone and broadband service. Under the current Tribal Lifeline program, an Eligible Telecommunications Carrier (“ETC”) serving Tribal lands is eligible to receive up to \$34.25 per month if they reduce the price of telephone and broadband service to residents of Tribal lands by that amount. *The purpose of the Tribal Lifeline program is to make telephone and broadband service affordable for residents of Tribal lands. This is accomplished by requiring ETCs to reduce the price of service by the amount of the Lifeline discount.*⁴ Over the last 20 years, since the passage of the Telecommunications Act of 1996 (“Act”), which established, for the first time, a competitive universal service market, carriers have sought to serve Tribal lands based upon the pro-competitive environment created by the Act and FCC. Initially, regional facilities-based carriers, like Western Wireless Corporation, obtained ETC status, secured high cost funding, and began serving Tribal lands and providing affordable wireless Lifeline service. Many of these regional carriers have now been acquired by the national carriers, who do not, for the most part, participate in the universal service program. For example, in 2005, facilities-based regional wireless carriers had approximately 10,000 Lifeline subscribers on Tribal lands in North Dakota and South Dakota.⁵ Over the next ten years, the regional wireless carriers serving North Dakota and South Dakota were acquired by the national carriers, who exited the Lifeline market (and relinquished ETC status),⁶ resulting in few, if any, Lifeline customers served by facilities-based carriers today.

⁴ 47 C.F.R. § 54.403. Under the FCC rules, an ETC is required to certify to USAC that it passes along the full amount of the Lifeline support to qualifying low-income consumers.

⁵ See <http://www.usac.org/about/tools/fcc/filings/default.aspx>.

⁶ The one exception is the Pine Ridge Indian Reservation where AT&T Wireless remains an ETC and provides Lifeline Service, although, based upon USAC reports, it does not have any Lifeline subscribers. In 2005, Western Wireless Corporation had approximately 5,000 Lifeline subscribers on the Pine Ridge Indian reservation alone.

Wireless resellers have filled the void left by the national facilities-based carriers not serving the Lifeline market. Nationally, residents of Tribal lands receive Lifeline service primarily from wireless resellers because there are very few, if any, facilities based wireless ETCs serving Tribal Lands. Tribal consumers specifically want wireless Lifeline service, not landline Lifeline service from the incumbent local exchange carriers. The FCC proposal to eliminate wireless resellers from the Lifeline program would have a devastating impact on residents of Tribal lands, which are not served by facilities-based wireless ETCs. A more thorough review of the facts demonstrates that:

1. Wireless resellers are the primary providers of Lifeline service on Tribal lands;⁷
2. Only a very small percentage of Tribal lands are served by facilities-based wireless carriers providing Lifeline service;⁸
3. The purpose of the Lifeline program, including the additional support for providing Lifeline service on Tribal lands, is to allow qualifying low-income consumers to pay reduced charges of services;⁹
4. Residents of Tribal lands will no longer have access to affordable Lifeline service when wireless resellers are no longer eligible for Lifeline support;
5. Tribes have not been consulted on changes to the Lifeline program; and
6. The factual record does not support elimination of Lifeline support for wireless resellers.

⁷ See <http://www.usac.org/about/tools/fcc/filings/2018/q2.aspx> for the support received by wireless resellers on Tribal lands compared to facilities-based carriers.

⁸ Based upon USAC reports and ETC designations, there appear to be very few facilities-based wireless carriers eligible to provide Lifeline service on Tribal lands. In South Dakota, for example, only two of 9 Indian reservations are served by a facilities-based wireless ETC. Many states have no facilities-based wireless ETCs serving Tribal lands.

⁹ See 47 C.F.R. § 54.401.

COMMENTS

A SYSTEMATIC FAILURE WITHIN THE COMMISSION TO PROPERLY CONSULT WITH TRIBAL NATIONS PRIOR TO ADOPTING RULES AND POLICIES IMPACTING RESIDENTS OF TRIBAL LANDS REQUIRES A FRESH APPROACH TO TRIBAL CONSULTATION.

In the *December 2017 Lifeline Order, NPRM and NOI*, the FCC seeks “comments on ways the Commission can better accommodate the important and lawful role of the states in the Lifeline program.”¹⁰ The Commission fails to recognize the important role of sovereign Nations in making Lifeline service available and affordable on Tribal lands and the need to consult with the Tribes on important public policy issues, like Lifeline service. The Commission’s failure to consult with the Tribes prior to eliminating Lifeline service offered by wireless resellers on Tribal Lands in the *December 2017 Lifeline Order, NPRM and NOI* reflects a systematic failure within the Commission to abide by its long-standing policy to consult with Tribal Nations prior to adopting and implementing rules and programs impacting residents of Tribal lands.

The OSTUA proposes the adoption of a new Tribal Consultation process for better coordination between the FCC and Tribal governments. Specifically, this new Tribal Consultation process would:

1. Allow Tribes to provide guidance and comments on issues of concern and actively participate in the Commission’s regulatory process, which is not well-suited for intergovernmental coordination;
2. Provide a mechanism for the recognition and enforcement of Tribal laws and Tribal Utility Commission orders;
3. Establish a process for resolution of Tribal government complaints against entities regulated by the FCC; and
4. Address other communications matters impacting the Tribes.

¹⁰ *December 2017 Lifeline Order, NPRM and NOI* at para. 54.

The OSTUA has filed a Petition for Reconsideration of the *December 2017 Lifeline Order, NPRM and NOI* urging the Commission to reconsider the changes adopted in the Tribal Lifeline program and commence consultation with Tribes prior to adopting any changes to the Lifeline program impacting residents of Tribal Lands. The Commission currently provides little or no meaningful consultation with the Tribes, and what it does provide is mere lip service. While ONAP has held several informational gatherings and site visits, these meetings do not provide a formal mechanism for addressing issues of concern to the Tribes, and, as a result, most Tribes do not participate in the regulatory process at the FCC. OSTUA therefore proposes the adoption of the following new Tribal Consultation process:

1. Each Tribe shall identify an individual within the Tribal government for coordination with the FCC and communications providers; the FCC shall publicize the Tribal contact list.
2. FCC shall hold monthly conference calls on the first Monday of each month at 1 p.m. eastern time and hold quarterly meetings at the FCC and at Tribal locations (dates and times to be determined by Public Notice one month prior to the meeting date) to brief Tribes on issues relevant and important to Indian country and allow Tribes to submit oral and written comments to help guide policy in Indian country; these comments shall be posted under a new Docket and also included in the record of any existing open proceedings.
3. Tribal governments shall provide the FCC with copies of laws, regulations, ordinances, resolutions, and orders pertaining to the provision of telecommunications services on Tribal Lands; the FCC shall establish a public database of these laws, regulations, ordinances, resolutions and orders.
4. Tribal governments shall provide the FCC with periodic reports (i) identifying the communications issues of concern and the proposed resolution for these issues, (ii) detailing the steps taken by communications providers and the Tribe to meet the tribal engagement requirements in 47 C.F.R. § 54.313(a)(9), and (iii) other telecommunications issues impacting the Tribes; the FCC shall open a new docket for receipt of these reports and use these reports for the adoption of proposed rules and resolution of issues impacting the Tribes.
5. The FCC shall establish a separate informal complaint process for handling complaints and issues involving Tribal governments and communications providers.

THE COMMISSION SHOULD NOT MAKE RADICAL CHANGES TO THE LIFELINE PROGRAM WITHOUT ANALYZING THE IMPACT ON LOW-INCOME CONSUMERS.

Over the last 20 years, the Commission has adopted changes to the Lifeline program, but has remained true to *the central purpose of the program: providing affordable access to telecommunications and information services for low-income consumers*. In the *December 2017 Lifeline Order, NPRM and NOI*, the Commission, for the first time, turns its back on low-income consumers, especially residents of Tribal lands, by eliminating affordable access to telecommunications and information services for those consumers.

The Commission's actions not only go against decades of Lifeline policy, but also the mandates of the Act. In the 1996 Telecommunications Act, Congress mandated that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."¹¹

Based upon this mandate, the Commission found that:¹²

With respect to the Lifeline and Link-Up programs, we observe that the Act evinces a renewed concern for the needs of low-income citizens. Thus, for the first time, Congress expresses the principle that rates should be "affordable," and that access should be provided to "low-income consumers" in all regions of the nation.

By eliminating Lifeline support for wireless resellers, the Commission is taking away Lifeline service from low-income consumers, who will not have access to wireless Lifeline service. Not only does the Commission deliberately discriminate against Native Americans by ignoring its own consultation policy, the FCC's Order has a discriminatory impact on Native

¹¹ 47 U.S.C. § 254(a)(3).

¹² Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 at para. 335 (1997) ("*Universal Service First Report and Order*").

Americans by eliminating Lifeline support in its entirety for wireless resellers, who are the primary providers of Lifeline service on Tribal lands.

OSTUA respectfully urges that the Commission to expand, not diminish, Lifeline service for low-income consumers by providing incentives for all carriers, facilities-based and resellers, to serve a disadvantaged segment of society, *e.g.*, low-income consumers, by, among other means, providing varying levels of Lifeline support based upon the services provided to eligible low-income consumers. By incentivizing the provision of Lifeline service by all ETCs, the Commission will fulfill its statutory mandate to make telecommunications and information services available and affordable for low-income consumers.

CONCLUSION

OSTUA respectfully submits these Comments on the *2017 Lifeline Order, NPRM and NOI*.

Respectfully submitted,

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February 21, 2018